

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

JAZMIN CERNA and DANIEL CERNA,

Defendants.

CASE NO. 8:05CR163

MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation (Filing No. 78) issued by Magistrate Judge Thomas Thalken recommending denial of the Defendants' motions to suppress (Filing Nos. 39, 60 and 61). No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

Through their motions, the Defendants seek suppression of evidence obtained as a result of a March 28, 2005, search of a residence in Omaha, Nebraska. (Filing Nos. 39, 60, 61.) At the evidentiary hearing, the Defendant, Jazmin Cerna, expanded his challenge to include statements made on or about March 28, 2005.

Judge Thalken determined, with respect to the Defendant, Jazmin Cerna: her statements made at the residence were voluntary; and her statements made at the police department were voluntary; the affidavit in support of the search warrant set out sufficient probable cause for issuance of the search warrant; even assuming the lack of probable cause, the *Leon* good-faith exception would allow the admission of the evidence seized, as none of the exceptions to the good-faith rule apply.

With respect to the Defendant, Daniel Cerna, Judge Thalken determined: he lacks standing to challenge the search of the residence; if he were found to have standing,

however, the affidavit in support of the search warrant set out sufficient probable cause for issuance of the search warrant; even assuming the lack of probable cause, the *Leon* good-faith exception would allow the admission of the evidence seized, as none of the exceptions to the good-faith rule apply.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the parties' briefs (Filing Nos. 40, 62, 73) and the transcript (Filing No. 79). The Court has also viewed the evidence. (Filing No. 77.) Because Judge Thalken fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 78) is adopted in its entirety;
2. The Defendant Jazmin Cerna's motions to suppress (Filing Nos. 60, 61) are denied; and
3. The Defendant Daniel Cerna's motion to suppress (Filing No. 39) is denied.

DATED this 25th day of August, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge